

(2011) 05 DEL CK 0364
In the Delhi High Court
Case No : Criminal A. No. 256 of 2002

R.C. Kundu

APPELLANT

Vs

The State (NCT of Delhi) C.B.I.

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Evidence Act, 1872 — Section 3

Prevention of Corruption Act, 1988 — Section 13(1)(2)(3), 20, 20(3), 4, 7

Citation : (2011) 5 AD 545 : (2011) 181 DLT 360

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Sunil Kumar and Atul Kumar, for the Appellant; Narender Mann, Special Public Prosecutor for the State/CBI, for the Respondent

Judgement

M.L. Mehta, J.—This criminal appeal is directed against the judgment dated 26th March, 2002 and the order dated 27th March, 2002 of the learned Special Judge Mr. R.K. Gauba whereby the Appellant/accused was convicted u/s 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") and was sentenced to undergo rigorous imprisonment of four years with fine of Rs. 500/- on each count. Both the sentences were to run concurrently.

2. Since the impugned judgment and order have been assailed on various grounds and the main challenge is centered around the analysis of the prosecution witnesses as done by the learned Special Judge, it would be useful to briefly narrate the facts of the case.

3. Complainant, Ved Prakash (PW2) was working as Sr. Depot Agent in booth No. 1197, Sewa Nagar, New Delhi of Delhi Milk Scheme ("DMS"). The accused R.C. Kundu, at the relevant time, was posted as an Assistant Milk Distribution Officer (AMDO) in DMS and was looking after the area of Sewa Nagar. The complainant PW2 made a complaint against accused vide Ex. PW2/A dated 30th November, 1990 to Sh. Ashok Kumar (PW10) of CBI. It was to the effect that the accused

had come to his booth on 2nd November, 1990 and leveled false accusation that the complainant was involved in the black marketing of milk and also threatened to get him removed from the booth. The complainant further stated that accused also asked him to come to his office at Shadipur Depot, Delhi on 29th November, 1990 at about 11:30 a.m. He went and met the accused where he demanded Rs. 500/- from him and threatened that in the event of non-payment he would be removed from the job by leveling some accusations against him. The complainant stated that when he pleaded inability to pay the demanded amount the accused agreed to accept Rs. 400/-. The complaint also indicated that the accused was to come on 2nd December, 1990 at about 7.00-7.30 a.m. near booth No. 497 opposite Defence colony for taking the said amount.

4. FIR was registered and arrangements for laying trap were made by Mr. Kishore Kumar (PW8). Two independent witnesses, namely Mr. Kundan Singh (PW3) and Mr. P. Chander Shekharan (PW4) were joined in the proceedings. The pre-trap proceedings were conducted. The complainant came along with four currency notes of Rs. 100/- each (Ex. P4 to P7), the numbers of which were noted down and were treated with phenolphthaleine powder followed by demonstration of the use of powder by the Investigating Officer in the presence of the complainant and the two public witnesses PW3 and PW4. Public witness Mr. Kundan Singh (PW3) was directed to remain present along with complainant during the trap proceedings as a shadow witness and PW4 was advised to remain close by. The trap party reached booth No. 497 where the accused came at around 7.00 a.m. and met the complainant. There the accused demanded payment of bribe money which was handed over by the complainant in the presence of the shadow witness PW3. The accused counted the same with both hands and then put it in the left side of the pocket of his long gown which he was wearing. Subsequently, when challenged by the raiding party, money was recovered from the said pocket of the accused. Washes of both the hands of the accused were taken separately, which in the process turned pink. All the washes were separately bottled and sealed and later on sent to the CFSL which confirmed the presence of phenolphthaleine powder and sodium carbonate. The pre trap proceedings were reduced in writing in handing over memo Ex.PW2/B and the post raid proceedings, in the recovery memo Ex.PW2/C. Sanction for prosecution of the accused was accorded by Mr. Deepak Jain (PW1), Deputy General Manager, Admn., DMS. The accused was charge sheeted and he pleaded not guilty and claimed trial.

5. The prosecution examined as many as thirteen witnesses. In the statement recorded u/s 313 Code of Criminal Procedure the accused denied the prosecution case in entirety. He, however, admitted about his arrest on 2nd December, 1990 near booth No. 497, Sewa Nagar and also that he used to inspect and check booths of his area. He admitted about his presence, recovery and arrest at booth No. 497 and also about the seizure of his scooter from there. With regard to the recovery of Rs. 400/- from him he stated that the complainant was a regular defaulter in depositing the cash with the cashier on daily basis and was in the

habit of borrowing money from one or the other for making up the short falls of the money to be deposited with the cashier. He stated that in October, 1990 the complainant fell short of money and for making payment to the cashier he borrowed Rs. 400/- from him and the repayment of which he evaded despite being reprimanded by him. He said that this Rs. 400/- was taken by him from the complainant as refund of the said loan. The accused also stated that the complainant was indulging in black marketing of milk and vide order dated 29th November, 1990 (PW2/B) his services were terminated with effect from 3rd December, 1990 by him and Mr. Gautam Chand (PW9). He pleaded that it was on account of this grudge that the complainant has got him trapped. The accused also referred to the termination of service of the complainant on 18th December, 1990 vide order marked X4 on account of his having been found mixing water in the milk. He also questioned the validity of the sanction granted by PW1. No evidence was led in defence by the accused.

6. I have heard learned Counsel for the Appellant and the prosecution and have perused the records. Learned defence counsel submitted that the complainant was carrying grudge against the accused on account of later having entertained complaints against him regarding adulteration and overcharging and ultimately being responsible for terminating his job. He submitted that the statement of the complainant made in the Court was contrary to his statement in the complaint and so he was not reliable. The learned Counsel also submitted that PW4 Mr. P. Chander Shekharan did not support the prosecution case at all and so he could not be relied upon. The learned Counsel submitted that the accused was in the habit of utilizing the booth money for his purposes and then run short of the cash to be deposited with the cashier and was in the habit of borrowing money from different persons and in the process when he got short of money in October, 1990 he borrowed Rs. 400/- from him and that it was this amount of Rs. 400/- which was refunded by the complainant to the accused and was ultimately recovered from him at the time of trap on 2nd December, 1990. The learned Counsel also disputed the validity of sanction of prosecution of accused. In support of his contentions, the learned Counsel relied upon the cases, namely A. Subair Vs. State of Kerala, Man Singh Vs. Delhi Administration, and State of Karnataka Vs. Ameer Jan,

7. On the other hand, learned Counsel for the CBI submitted that the accused was abusing his position to his advantage by harassing the complainant and that there was infact no complaint against the complainant but a complaint against someone else was sought to be planted against the complainant as an afterthought to wriggle out of the post trap situation. With regard to the testimony of PW4, the learned Counsel for CBI submitted that though this witness was cross-examined by the prosecutor, but on reading his testimony as a whole it may be seen that he did support the prosecution case. Regarding the testimony of complainant, the learned Counsel submitted that the complainant made consistent statement and nothing could be elicited in his lengthy cross-examination. Learned Counsel further submitted that the factum of recovery of

tainted money being admitted and the accused having failed to rebut the presumption arising against him, it was a clear case of demand and acceptance of money by the accused from the complainant as illegal gratification.

8. With regard to the sanction for prosecution it was held by the Supreme Court in the case of Ameer Jan (supra) as under:

7. ...We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

8. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record....

9. In the present case, PW1 Deepak Jain, who was the DGM, was competent to appoint and remove Group "C" and "D" employees of DMS and accused being Group "C" employee, Mr. Jain was thus competent to grant sanction. He stated that he accorded sanction to prosecute the accused. He proved this sanction order as PW1/A. He also stated that before granting sanction he had gone through the documents regarding the facts of the case and applied his mind. He denied that he did not apply his mind or that he had just signed the dotted lines of the draft submitted to him by CBI. The learned Special Judge rightly relied upon the testimony of this witness and held the sanction for prosecution to be valid. There is no reason to interfere with this finding.

10. I am conscious of the fact that in a case like this, where the complainant is subordinate to the accused and was allegedly facing some allegations of adulteration of milk and over charging and was under the supervision of the accused, the testimonies of prosecution witnesses and particularly the complainant are to be scrutinized with great caution. Before proceeding to see as to whether learned Special Judge rightly appreciated the testimonies of the prosecution witnesses and other material evidence, it would be relevant to take note of the defence of refund of loan of Rs. 400/- by the accused to the complainant and recovery thereof from the accused at the time of raid. As noted above, the plea of the accused was that the complainant was in the habit of borrowing money from one or the other for making payment to the cashier and in the process he also borrowed Rs. 400/- from him in October, 1990 and it was this money that was refunded by the complainant to him on 2nd December, 1990 and which came to be ultimately recovered from him during the trap.

11. The essential ingredients of Section 7 are:

- (i) that the person accepting the gratification should be a public servant;
- (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.

12. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are:

- (i) that he should have been a public servant;
- (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and
- (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

13. In the case of Man Singh (supra) which was relied upon by the learned defence counsel, it was held thus:

2. ...We have gone through the evidence and we find that there are intrinsic circumstances in the case which fully probablise the defence of Appellant and show that the explanation given by him is reasonable....

...It is well settled that in such cases the accused is not required to prove his defence by the strict standard of proof of reasonable doubt but it is sufficient if he offers an explanation or defence which is probable and once this is done, the presumption u/s 4 stands rebutted. In the instant case, from the evidence referred to above, the defence of the Appellant has been clearly proved u/s 3 of the Evidence Act....

14. In order to substantiate his defence, suggestions were given to PW2 in cross-examination that on various dates his cash was short and that he deposited the cash on subsequent dates or that he did so after borrowing from other persons. He denied all these suggestions. The complainant (PW2) also categorically denied that since he used to give money to the cashier he had taken loan of Rs. 400/- from the accused in the month of October, 1990 or that he had asked the accused to come to depot number 497 for getting back his loan of Rs. 400/- on 2nd December, 1990. It may be noted that complainant stated that when he met the accused at depot No. 497, the accused enquired "kaam ho gaya, paise vaise laye ho ya nahi" (work has been done. Have you brought money or not). In his cross-examination, a suggestion was put to PW2/complainant on behalf of the accused that when accused met him at depot No. 497 in the morning of 2nd December, 1990, accused asked him "kya mera paise laye ho"(Have you brought my money), to which he said, yes I have brought it and here it is. To similar effect was the statement of PW3 who stated that the accused asked the complainant if he had brought money (kya paise laye ho) to which complainant

stated yes I have (haan laya hun). PW3 further stated thereafter that accused enquired as to how much money he had brought to which complainant replied that he had brought Rs. 400/-. On this, the accused stated that give me whatever you have brought (Jo kuch bhi laya hai la de). On this, complainant took out the currency notes and gave it to the accused. Some suggestions were given to Shri Kundan Singh (PW3) in his cross-examination to which he replied in this manner, "It is correct that at the spot the DMS booth Kundu enquired from Ved Prakash "PAISE LAYO HO". I do not remember as to whether accused said "KYA MERA PAISA LAYO HO". Thereafter he said I have brought the money. I cannot say if the money given by Ved Prakash to Kundu was towards the return of loan money taken by Ved Prakash from the accused earlier. It is wrong to suggest that I am deposing falsely at the instance of the CBI." It is also seen that a suggestion was given to PW8 that the accused had himself taken out the tainted amount from his pocket and had claimed even at that stage that the same pertains to the loan given earlier to the complainant. This suggestion was also denied by this witness.

15. From the above, it is seen that this plea not only apparently seems to be unbelievable but will not appeal to any reason. The accused was not only unhappy with the working of the complainant on account of some complaints against him, but also on account of his habit of irregularly making the deposit with the cashier and borrowing the money from different persons. With this type of conduct of the complainant, it would not appeal to any reason that the accused, who was not only senior officer of the complainant but was competent to entertain complaints against him, would lend him Rs. 400/- for enabling him to make payment to the cashier of the DMS. It also does not appeal to me that he will go to booth No. 497, which is not that of the complainant, for taking refund of the said Rs. 400/- in the cold early morning at 7.00 a.m.

16. There is another interesting aspect of the matter which needs to be taken note of. According to the accused, a complaint was received against the complainant on 15th November, 1990 and thereafter, he along with Gautam Chand (PW9) visited booth No. 335 but there they came to know that the complaint was with regard to booth No. 1197 and then they went to booth No. 1197 where they found the complainant over charging Rs. 5 instead of Rs. 4.50/- and that he was warned on giving apology. The said complaint is put on record as Ex. PW5/B and the written apology Mark X1 and warning as Mark X2. PW5/ Smt. Kamla Dhingra, who was Deputy Manager, Distribution, Delhi Milk Scheme at the relevant time, admitted that this complaint related to booth No. 335. The complainant in that matter was one Sh. Nand Kishore r/o N-623, Sewa Nagar. According to PW6, this complaint was recorded by him as Ex. PW5/B on telephonic complaint of Nand Kishore. A look at Ex. PW5/B gives an interesting picture. There are some cuttings on this complaint. PW6 also admitted over writing and stated that writing booth No. 335 has been deleted and replaced with 1197. This leaves no doubt that the complaint Ex. PW5/B of Nand Kishore was with respect to booth No. 335 and was written by Mr. Mathur/PW6. PW6 did not

know as to who had tempered this complaint. The complaint was taken by none else than accused and PW9/Shri Gautam Chand. According to PW9 at the booth No. 335 they learnt that complaint related to booth No. 1197 and so they arrived at booth No. 1197 of the complainant and there they found the complainant overcharging. In the complaint Ex. PW5/B made by Nand Kishore in respect of booth No. 335 there is a clarification report in the handwriting of accused and PW9 Gautam Chand, stating that they enquired from the customers, but there was no complaint regarding extra charging and that they did not observe any harsh behavior. It is also interesting that allegations of extra charging and misbehaviour as mentioned in the complaint relating to booth No. 335 were later confronted to the complainant at booth No. 1197.

17. Another interesting aspect in this regard which is noticed is that PW5 Smt. Kamla Dhingra, who was Deputy Manager of Distribution at the relevant time and was responsible for looking after the distribution of milk to milk booths and also to supervise the working of the field staff concerned and also to attend the complaints against them herself visited the booth No. 1197 of complainant. She stated that no customer made any complaint regarding over charging or adulteration by accused, though there were complaints regarding his behaviour.

18. In this backdrop of the complaint, the so called apology of the complainant and warning extended to him which are respectively marked X1 and X2 would have no meaning. These are the documents which can easily be created, procured and managed. The learned Special Judge has rightly not relied upon those documents because these are not proved on record being photocopies.

19. PW2/complainant has deposed about all that he stated in his complaint Ex. PW2/A. He very categorically stated and maintained about the visit of the accused and Gautam Chand (PW9) at his booth on 22nd November, 1990. The accused took away his I-card and asked him to come to the office on 29th November, 1990 at 11:30 a.m. Accordingly, he went to the office and met the accused. There the accused demanded Rs. 500/- and stated that in case he failed to pay him Rs. 500/-, as demanded, he will be removed from his booth. He requested the accused with folded hands and later on at this request the accused reduced the amount to Rs. 400/- and asked him to pay the said money on 2nd December, 1990 at 7:30 p.m. at booth No. 497. He also stated and maintained with regard to entire pre-trap and post-trap proceedings and the presence of Kundan Singh (PW3) and PW4. He also in consonance with the allegations as made in the complaint deposed in detail about the post-trap proceedings and the recovery of Rs. 400/- from the accused. He was subjected to lengthy cross-examination by learned defence counsel which mainly centered around the allegations that he used to run short of money and was in the habit of borrowing from others and in the process has borrowed Rs. 400/- from the accused and that amount was refunded by him to the accused on 2nd December, 1990. He maintained the allegations as set out in the complaint. Nothing could be elicited from his cross-examination to doubt his testimony. PW3 who accompanied as a

shadow witness has also supported the prosecution case of demand, acceptance and recovery. He too was subjected to lengthy cross-examination and nothing material was brought out to doubt him. PW2 also stated that after keeping the notes in his gown, the accused returned his I-card Ex.P-9 which he had taken from him on 22nd November, 1990. Though, this fact was not recorded in his statement u/s 161 Cr.P.C., but he maintained in his cross-examination about the accused having taken his I-card and then returned after taking Rs. 400/- from him. PW3 also identified the I-card Ex. P-9 of the complainant. .

20. Though, PW4 tried to resile from his statement, but during the course of his cross-examination by learned prosecutor this witness supported the prosecution. Initially he denied having met and seen the complainant before the raid, but subsequently he admitted having met the complainant and having read and understood the complaint Ex. PW2/A. He also admitted preparation of handing over memo Ex. PW2/B in his presence and all the pre and post trap proceedings. Though, initially he stated that he did not notice if the accused extended his hands towards the complainant for taking money, but in answer to a question by the learned prosecutor he admitted that in his statement u/s 161 Code of Criminal Procedure he had stated that the accused extended his left hand towards the complainant and took bribe money and kept the same in his gown. He also stated that he did not recollect if accused counted that money with both hands. He further stated that on receipt of signal all reached at the milk booth and the CBI official apprehended the accused from both wrists and thereafter CBI officials disclosed their identity. He stated in the cross examination as follows, "I do not remember as to what was the responsibility of Kundu. I cannot admit or deny if Kundu told that he has kept the bribe money in the left pocket of his gown. However, I do remember that the CBI officials recovered the tainted money from the left pocket of gown of kundu.... I cannot admit or deny if I was asked by Shri Kishore Kumar, Inspector to recover the bribe amount from the pocket of the accused. I do not remember about the fact that number of recovered notes were compared with the numbers noted down in Ex. PW2/B by one of the CBI officials. It is correct that after the recovery I was handed over the memo Ex. PW2/B and thereafter myself and Kundan Singh (PW3) compared the number of recovered tainted notes."

21. Though, somewhat shaky, but PW4 has corroborated the testimony of PW2, PW3 and also PW8 not only with regard to recovery of tainted money from the accused, but also as regard to acceptance of same by the accused. PW2 and PW3 have corroborated each other on all material aspects with regard to demand, acceptance and recovery of currency notes of Rs. 400/-

22. Though, the receipt of the tainted money and its recovery is not in dispute, but the same is further confirmed from the testimony of PW7 who analysed the washes and confirmed the presence of phenolphthalein powder and sodium carbonate in washes.

23. From the above discussion it is seen that there is admitted evidence with

regard to the acceptance and recovery of Rs. 400 from the testimony of PW2 and PW3. It is also established that there was a categorical demand of Rs. 400/- by the accused from the complainant and acceptance of the same in the shape of tainted money and subsequent recovery of the same from the pocket of his gown. The case A. Subair (supra) relied upon by the defence related to illegal demand of Rs. 25/- only. While interpreting the requirements of Section 7 and Section 13(1)(d) of the Act, the Supreme Court held as under:

The legal position is no more *res integra* that primary requisite of an offence u/s 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence u/s 13(1)(d) cannot be held to be established.

...Sub-section (3) of Section 13 is a "non-obstante clause". It provides that where the gratification is trivial and the Court is of opinion that no inference of corruption may fairly be drawn, it may decline to draw the presumption as referred to in Sub-sections (1) and (2). In other words, the Court is not bound to draw a presumption u/s 20 where the alleged gratification is too trivial....

24. It was in the peculiar facts of trivial nature of illegal demand that the Apex Court invoked Sub-section (3) of Section 20 of the Act.

25. Section 20 of the Act provides that where at the trial it is proved that an accused has accepted or obtained or agreed to accept or attempted to obtain any gratification (other than legal remuneration), it shall be presumed unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain such gratification as a motive or reward as mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. The requirement of this Section is only that it must be proved that the accused has accepted or obtained or agreed to accept or attempted to obtain gratification. It may be proved by direct evidence as in the present case. It has been proved from the direct evidence of testimonies of PW-4 and PW-5 that the gratification was accepted as a motive or reward for helping the complainant in the criminal case pending against him and other co-accused persons. In the case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, the Apex Court held as under:

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the

presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

26. In the case of C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, it was held as under:

21. It is well settled that the presumption to be drawn u/s 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

27. Though, the burden of proof on the accused to rebut the presumption u/s 20 is not akin to that of the burden placed on the prosecution to prove the case beyond reasonable doubt, but the same, in any case, was required to be discharged at least by preponderance of probability, which the accused has miserably failed to discharge.

28. In view of our aforesaid discussion, it is seen that nothing could be brought out by the defence neither from the witnesses nor was any evidence led to rebut the presumptions. If there were some truth in the plea that the amount which was recovered was refund of loan allegedly given by the accused to the complainant, the same would have been very conveniently proved by the accused both by examining himself as a witness or someone else acquainted with these facts. No evidence in this regard has been elicited from Gautam Chand who was examined as PW9. The story of loan as presented crumbles on its own legs like the story of complaint against the accused. Having discussed above that the defences of accused were not probable, the presumption of guilt u/s 7 also gets attracted by virtue of Section 20 of the Act.

29. In view of evidence of the prosecution witnesses particularly PW2, PW3, PW4 and PW8, I do not see any infirmity or illegality in the order passed by learned Special Judge and therefore, I do not see any reason to interfere with the same.

30. With regard to the quantum of sentence, the learned defence counsel prayed for lenient view stating that the case is about twenty one years old and the accused has already undergone lots of hardships. In the case of State of Andhra Pradesh Vs. V. Vasudeva Rao, also occurrence took place nearly 14 years back as in the present case. The Supreme Court held in that case that the protracted trial is no ground to mitigate the gravity of the offence. While noting down the legislative intent of prescribing minimum mandatory punishment of one year, the court held as under:

31. In the present case, how could the mere fact that this was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the Act and it is not a specialty of this particular case. It is a

defect inherent in implementation of the system that longevity of the cases tried under the Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated.

32. Considering the age of the accused, we reduce only the sentence to the minimum of one year without touching the fine imposed, but do not find any justifiable reason to reduce it below the minimum.

31. In the case of V. Vasudeva (spura), keeping in view the factual matrix, the Apex Court imposed the minimum sentence of one year. In the present case also though the occurrence had taken place nearly twenty one years back and during this period the accused has gone old, but this factum cannot be infact taken into account to reduce the sentence than the minimum prescribed under the Act. Guided by the decision of Hon''ble Supreme Court in the case of V. Vasudeva (supra), I am also inclined to impose minimum sentence as prescribed in this case as well. Thus, while maintaining the conviction u/s 7 and Section 13(1)(d) read with Section 13(2) as imposed by learned Special Judge, the sentences awarded are modified to six months u/s 7 and one year u/s 13(2) of the Act. The impugned order regarding fine and imprisonment in default of payment thereof shall remain as before. The substantive sentences shall run concurrently. The period of imprisonment, if any, already undergone by convict shall be set off. The accused/convict shall be taken into custody to undergo imprisonments. The present appeal is disposed of accordingly.